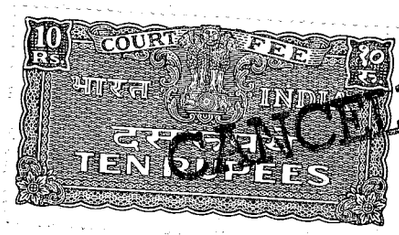

(3)
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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P.No. 2010 /2003

PETITIONER : Duleshwer Deshmukh,
S/o Jhadu Ram Deshmukh,
Aged about 45 years,
R/o MIG-I, 1012, Hudco,
Distt. Durg (C.G.).

P. R. No. 1394/03
Presented by Shri B.K.Kumar Gupta
dated 30.06.03

-Versus –

RESPONDENTS : Smt. Kirtilata Deshmukh,
W/o Duleshwer Deshmukh,
Aged about 40 years,
R/o L.I.G. 109/110, Hudco,
District – Durg (C.G.).

WRIT PETITION UNDER ARTICLE [redacted]/227 OF THE CONSTITUION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDER OR DIRECTION TO DO JUSTICE IN THE MATTER.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(51)

आदेश पत्रक

मामला क्रमांक WP 2010/07 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	11-7-2003 Shri Rajeev Shrivastava, counsel for the petitioner. By this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the impugned order dated 15th March 2003 passed by the leaned 5th Additional Sessions Judge, Durg, by which the learned Additional Sessions Judge has set-aside the ex-parte decree passed in Civil Suit No. 26-A/95 regarding divorce against Smt.Kirtilata Deshmukh, wife of the petitioner. The case of the petitioner is that respondent Smt. Kirtilata Deshmukh was the wife of the petitioner and an application under Section 13 of the Hindu Marriage Act was filed on 14-11-1995 by the petitioner on the ground of desertion. A notice of the application was issued to the respondent through registered post as per the provisions of Order 5 Rule 19-A of the C.P.C. The said notice was returned to the Court with an endorsement that the addressee has refused to accept the same and on the basis of the averment made in the application filed by the petitioner on 20th March 1996, the learned 5th Additional Sessions Judge Durg, granted a decree of divorce. After about five years of the passing of the judgment and decree dated 20-3-1996 the respondent moved an application under Order 9	

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(52)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Rule 13 read with Section 151 of the C.P.C. for setting aside the ex-parte judgment and decree on the ground that no notice was served on the respondent and the respondent never refused to accept the notice. The learned Additional Sessions Judge vide impugned order has set-aside the ex-parte decree. The order of the learned Additional Sessions Judge is not legal in the eye of law. The service by way of refusal was effected on the respondent and the application was time barred, therefore, the order dated 15th March 2003 be quashed.

I have heard the learned counsel for the petitioner and perused the impugned order as well as the statement of the respondent recorded in the application for setting aside the ex-parte decree.

A perusal of the impugned order reveals that the respondent herein moved an application under Order 9 Rule 13 read with Section 151 of the C.P.C.. In para 6 of the application the respondent mentioned that on 13th June 2001 one Belchandan informed her over telephone that the petitioner herein going to marry some girl on 2nd July 2001 in Arya Samaj Mandir, Sector-6 and the name of the girl is Neeta Dilliwar and on coming to know about this, the respondent herein moved an application before the Police Station, Durg on

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1-7-2001 and on 3-7-2001 she filed a suit for injunction. On 6th July 2001 her husband appeared in that case and mentioned that an ex-parte decree of divorce has been passed against the respondent on 20th March 1996, therefore on 6th July 2001 for the first time she came to know about the passing of any ex-parte divorce decree against her. Thereafter she applied for the copy on 12-7-2001, she received the certified copy of the statement and divorce application. In that petition the statements of the petitioner and the respondent herein were recorded by the learned Additional Sessions Judge and after recording the evidence the learned Additional Sessions Judge reached to the conclusion that the service on the respondent herein was not effected and believing the statement of the respondent herein set-aside the ex-parte decree and in that order the learned Additional Sessions Judge has given various reasons for setting aside the decree. One of the reasons given is that the summons were issued only through the registered post, whereas the Court ordered for registered as well as the ordinary process, the process summons even not issued and even the process fee was not paid for ordinary summons. Moreover, on perusal of the statement of the respondent herein and impugned order it appears that if after passing of the decree the petitioner herein took the respondent to various places

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आदेश पत्रक

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मामला क्रमांक MO 2010/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and both of them went to various places concerning that some papers Ex.-P/1 to Ex.-P/13 are produced which itself show that the respondent herein was not aware about any ex-parte decree passed against her. Even that postman who recorded refusal on the notice envelope was not examined by the petitioner herein who was the best person to depose before the Court as to whether the respondent herein herself refused to accept the notice.

In view of the above, I am of the opinion that the learned trial Court has not committed any illegality or irregularity in setting aside the ex-parte decree and the impugned order does not suffer from any infirmity. I do not find any force in this petition and the same is dismissed.

Sd/-
L.C. Bhadoo
Judge

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[पीछे देखिये